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15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

17 BARRY GRAY, individually and on ) Case No.  
18 behalf of all others similarly situated, )  
19 ) **CLASS ACTION**  
20 Plaintiff, )  
21 ) **COMPLAINT FOR VIOLATIONS**  
22 vs. ) **OF:**  
23 )  
24 ) 1. NEGLIGENT VIOLATIONS  
25 ) OF THE TELEPHONE  
26 ) CONSUMER PROTECTION  
27 ) ACT [47 U.S.C. §227 ET  
28 ) SEQ.]  
29 ) 2. WILLFUL VIOLATIONS  
30 ) OF THE TELEPHONE  
31 ) CONSUMER PROTECTION  
32 ) ACT [47 U.S.C. §227 ET  
33 ) SEQ.]  
34 )  
35 ) **DEMAND FOR JURY TRIAL**  
36 )  
37 )

38 Plaintiff, BARRY GRAY ("Plaintiff"), individually and on behalf of all

1 others similarly situated, alleges the following upon information and belief based  
2 upon personal knowledge:

3

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action individually and on behalf of all others  
6 similarly situated seeking damages and any other available legal or equitable  
7 remedies resulting from the illegal actions of WYNDHAM VACATION  
8 RESORTS, INC., (“Defendant”), in negligently, knowingly, and/or willfully  
9 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone  
10 Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby invading  
11 Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
14 a resident of California, seeks relief on behalf of a Class, which will result in at  
15 least one class member belonging to a different state than that of Defendant, a  
16 company with its principal place of business and State of Incorporation in  
17 Delaware state. Plaintiff also seeks up to \$1,500.00 in damages for each call in  
18 violation of the TCPA, which, when aggregated among a proposed class in the  
19 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
20 Therefore, both diversity jurisdiction and the damages threshold under the Class  
21 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has  
22 jurisdiction.

23 3. Venue is proper in the United States District Court for the Eastern  
24 District of California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a)  
25 because Defendant does business within the state of California and the county of  
26 San Bernardino.

27 **PARTIES**

28 4. Plaintiff, BARRY GRAY (“Plaintiff”), is a natural person residing in

San Bernardino, California and is a "person" as defined by 47 U.S.C. § 153 (10).

5. Defendant, WYNDHAM VACATION RESORTS, INC. (“Defendant”), is a leader in the purchasing consumer debts and collecting thereon from debtors, and is a “person” as defined by *47 U.S.C. § 153 (10)*.

6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

## **FACTUAL ALLEGATIONS**

8. Beginning in or around 2015, Defendant contacted Plaintiff on her cellular telephone, (909) 456-1036, in an attempt to collect an alleged outstanding debt owed by his wife.

9. Defendant placed multiple calls in a single day to Plaintiff's cellular telephone seeking to collect the alleged debt owed by his wife.

10. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to place its daily calls to Plaintiff seeking to collect the debt allegedly owed by his wife.

11. Defendant's calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

12. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to *47 U.S.C. § 227(b)(1)*.

13. Plaintiff does not owe the alleged debt Defendant is calling her about and has never provided any personal information, including her cellular telephone number, to Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on her cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

## **CLASS ALLEGATIONS**

14. Plaintiff brings this action on behalf of herself and all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

15. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

16. Defendant, its employees and agents are excluded from The Class.

1 Plaintiff does not know the number of members in The Class, but believes the  
2 Class members number in the thousands, if not more. Thus, this matter should be  
3 certified as a Class Action to assist in the expeditious litigation of the matter.

4       17. The Class is so numerous that the individual joinder of all of its  
5 members is impractical. While the exact number and identities of The Class  
6 members are unknown to Plaintiff at this time and can only be ascertained  
7 through appropriate discovery, Plaintiff is informed and believes and thereon  
8 alleges that The Class includes thousands of members. Plaintiff alleges that The  
9 Class members may be ascertained by the records maintained by Defendant.

10       18. Plaintiff and members of The Class were harmed by the acts of  
11 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
12 and Class members via their cellular telephones thereby causing Plaintiff and  
13 Class members to incur certain charges or reduced telephone time for which  
14 Plaintiff and Class members had previously paid by having to retrieve or  
15 administer messages left by Defendant during those illegal calls, and invading the  
16 privacy of said Plaintiff and Class members.

17       19. Common questions of fact and law exist as to all members of The  
18 Class which predominate over any questions affecting only individual members  
19 of The Class. These common legal and factual questions, which do not vary  
20 between Class members, and which may be determined without reference to the  
21 individual circumstances of any Class members, include, but are not limited to,  
22 the following:

23           a. Whether, within the four years prior to the filing of this  
24 Complaint, Defendant made any collection call (other than a  
25 call made for emergency purposes or made with the prior  
26 express consent of the called party) to a Class member using  
27 any automatic telephone dialing system to any telephone  
28 number assigned to a cellular telephone service;

- b. Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

20. As a person that received numerous collection calls from Defendant using an automatic telephone dialing system, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The Class.

21. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

22. A class action is superior to other available methods of fair and efficient

adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

23. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

24. Defendant has acted or refused to act in respects generally applicable

1 to The Class, thereby making appropriate final and injunctive relief with regard to  
2 the members of the California Class as a whole.

3 **FIRST CAUSE OF ACTION**

4 **Negligent Violations of the Telephone Consumer Protection Act**

5 **47 U.S.C. §227 et seq.**

6 25. Plaintiff repeats and incorporates by reference into this cause of  
7 action the allegations set forth above at Paragraphs 1-24.

8 26. The foregoing acts and omissions of Defendant constitute numerous  
9 and multiple negligent violations of the TCPA, including but not limited to each  
10 and every one of the above cited provisions of *47 U.S.C. § 227 et seq.*

11 27. As a result of Defendant's negligent violations of *47 U.S.C. § 227 et*  
12 *seq.*, Plaintiff and the Class Members are entitled an award of \$500.00 in  
13 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*  
14 *227(b)(3)(B)*.

15 28. Plaintiff and the Class members are also entitled to and seek  
16 injunctive relief prohibiting such conduct in the future.

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20 **SECOND CAUSE OF ACTION**

21 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

22 **Act**

23 **47 U.S.C. §227 et seq.**

24 (Against All Defendants)

25 29. Plaintiff repeats and incorporates by reference into this cause of  
26 action the allegations set forth above at Paragraphs 1-28.

27 30. The foregoing acts and omissions of Defendant constitute numerous  
28 and multiple knowing and/or willful violations of the TCPA, including but not

1 limited to each and every one of the above cited provisions of *47 U.S.C. § 227 et*  
2 *seq.*

3 31. As a result of Defendant's knowing and/or willful violations of *47*  
4 *U.S.C. § 227 et seq.*, Plaintiff and the Class members are entitled an award of  
5 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*  
6 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

7 32. Plaintiff and the Class members are also entitled to and seek  
8 injunctive relief prohibiting such conduct in the future.

9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

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13 **FIRST CAUSE OF ACTION**

14 **Negligent Violations of the Telephone Consumer Protection Act**

15 **47 U.S.C. §227 et seq.**

16 • As a result of Defendant's negligent violations of *47 U.S.C. §*  
17 *227(b)(1)*, Plaintiff and the Class members are entitled to and  
18 request \$500 in statutory damages, for each and every violation,  
19 pursuant to *47 U.S.C. § 227(b)(3)(B)*.  
20 • Any and all other relief that the Court deems just and proper.

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23 **SECOND CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

25 **Act**

26 **47 U.S.C. §227 et seq.**

27 • As a result of Defendant's willful and/or knowing violations of *47*  
28 *U.S.C. § 227(b)(1)*, Plaintiff and the Class members are entitled to

1 and request treble damages, as provided by statute, up to \$1,500, for  
2 each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and  
3 *47 U.S.C. § 227(b)(3)(C)*.

4 • Any and all other relief that the Court deems just and proper.

5  
6 Respectfully Submitted this 8<sup>th</sup> Day of June, 2015.

7  
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9 P.C.

10 By: /s/ Todd M. Friedman

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